

Corporate Policy and Strategy Committee

10.00am, Tuesday, 28 February 2017

Consultation on the Councillors' Code of Conduct

Item number 7.5
Report number
Executive/routine
Wards

Executive Summary

The Scottish Government is consulting on a proposed change to the Councillors' Code of Conduct regarding declarations of interests in connection with quasi-judicial or regulatory matters.

This report provides a proposed response to the consultation for the City of Edinburgh Council.

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Consultation on the Councillors' Code of Conduct

1. Recommendations

- 1.1 To consider the proposed response to the consultation contained at paragraphs 3.9.1 and 3.9.2 of this report.

2. Background

- 2.1 The Scottish Government is consulting on a proposed change to the Councillors' Code of Conduct regarding declarations of interests in connection with quasi-judicial or regulatory matters.
- 2.2 The Code of Conduct currently contains a specific exclusion (paragraph 5.18(2)) for councillors who are members of a devolved public body (as defined by the Ethical Standards in Public Life etc (Scotland) Act 2000) or who are members of a company that has been established wholly or mainly to provide services to the local authority and which have entered into a contractual arrangement with the local authority for the supply of goods and services.
- 2.3 The specific exclusion requires councillors to declare their interest at meetings where an item is being considered that is relevant to their interest but allows them to take part in the consideration of the item. The specific exclusion does not apply to items of a quasi-judicial or regulatory nature (paragraph 7.5) resulting in councillors having to declare an interest and not take part in these items.
- 2.4 The Standards Commission had been asked by Aberdeen City Council to consider granting a dispensation to allow members of Nestrans, the regional transport partnership for Aberdeen City and Aberdeenshire, to take part in the Council's consideration of quasi-judicial applications in which Nestrans have an interest.
- 2.5 Nestrans is one of seven regional transport partnerships that have been set up to provide a co-ordinated approach to transport planning and delivery. As part of its role Nestrans comments on major planning matters that affect transport in its area which could then be considered by the relevant Council's planning committee.
- 2.6 The Standards Commission refused the dispensation request on the grounds that it would run contrary to the Code. The result is that councillors who are also nominated or appointed by their councils to be members of Nestrans cannot take part in their council's discussion and decisions on quasi-judicial or regulatory matters in which that body has an interest. Nestrans and its member councils have argued that:

- 2.6.1 this may adversely affect the ability of partnership bodies such as Nestrans to influence council decisions on important issues – for instance, most major planning applications will have potential transport implications; and
 - 2.6.2 this might also make it difficult to find councillors who are willing to serve on such bodies, since faced with having to choose between being members of the outside body and keeping the ability to take part in their council's consideration of issues in which the body has an interest councillors are likely to prioritise the latter and so decline to become members of outside bodies.
- 2.7 As a result of the decision by the Standards Commission the only way to address the issue raised by Aberdeen City Council would be to change the Code.

3. Main report

- 3.1 The Scottish Government is exploring whether to amend the Code of Conduct so that councillors who are appointed or nominated by Council to be members of an outside body would not be prevented from taking part in their council's consideration of a matter of a quasi-judicial or regulatory nature in which that other body had an interest.
- 3.2 It has been suggested that this could be achieved by extending the specific exclusion to apply to quasi-judicial matters. This would involve amendments to paragraph 7.5 of the Code which states that the specific exclusion in paragraph 5.18(2) does not apply to quasi-judicial or regulatory matters.
- 3.3 This change would not just affect regional transport partnerships but would affect other public bodies and could affect Arms Length External Organisations (ALEOs), depending on how the amendment is drafted.
- 3.4 Frequent declarations of interests at the Development Management Sub-Committee or the Licensing Sub-Committee have not arisen at the City of Edinburgh Council and subsequently neither has the issue which faced Aberdeen City Council and Aberdeenshire Council.
- 3.5 In regard to the reasons highlighted in the consultation and outlined in paragraphs 2.61 and 2.6.2 of this report, there does not appear to be a compelling argument for the City of Edinburgh Council. There has been no evidence that SESTRANS has felt constrained in how it influences Council decisions, evidenced by the lack of declarations of interests and it is right and proper that SESTRANS as a body separate from the Council should only influence Council decisions in a transparent manner as part of an agreed public process. There have been no difficulties raised with officers in identifying and appointing councillors who wish to be members of bodies such as SESTRANS.
- 3.6 A change to the Code of Conduct to allow councillors who are members of public bodies and ALEOs to take part in quasi-judicial matters could damage public trust in the decisions of that committee or sub-committee. For example, in regard to a

planning application by an ALEO, the Code currently requires a councillor, who is also the director of the ALEO to take no part in consideration of the item. If the Code was amended to include all bodies under the umbrella of section 5.18 (2) of the Code then the councillor could declare their interest and still take part in consideration of the item. There is a high probability that the public may doubt the impartiality of a committee making decisions on applications with councillors who are members of the applicant.

- 3.7 Councillors who are directors of ALEOs also have duties under the Companies Act. These duties require the directors to act in the best interests of the company. Any change in the Code which allowed councillors who are directors of ALEOs to take part in quasi-judicial matters may result in a perceived conflict between the Councillor's director duties and the need to ensure a proper and fair hearing.
- 3.8 As outlined above there appears to be no discernible benefit to the City of Edinburgh Council to change the Code and it could be prejudicial to its decision making process, and thus it is proposed that the feedback to the Scottish Government consultation is not supportive of any change.
- 3.9 It is proposed that the City of Edinburgh Council responds to the consultation by the Scottish Government as follows:
 - 3.9.1 Whilst sympathetic to the issues experienced in the Nestrans area the issues experienced by Aberdeen City Council and Aberdeenshire Council have not arisen in Edinburgh and subsequently the City of Edinburgh Council has no requirement to seek a change to the Councillors' Code of Conduct. The proposed change raises a concern that an increase in the scope of the specific exclusion at paragraph 5.18 (2) of the Code could damage public trust and confidence in the Council's decision making process in particular the planning and licensing processes.
 - 3.9.2 If the decision of the Scottish Government was to change the Code due to the needs of other local authorities then the City of Edinburgh Council asks that the extension of the specific exclusion is restricted to those public bodies outlined in the Ethical Standards in Public Life etc (Scotland) Act 2000. This would ensure that Arms Length External Organisations would not be covered by the specific exclusion for quasi-judicial matters. This would reflect their status as arms length from the relevant Council and emphasise that councillors who are members have specific duties to that organisation which could be seen to prejudice their decisions at committees.

4. Measures of success

- 4.1 To retain public trust and confidence in the impartiality of the decision making process.

5. Financial impact

- 5.1 There are no financial implications as a result of this report.

6. Risk, policy, compliance and governance impact

- 6.1 There is concern that the changing of the Code could erode trust and public confidence in the decision making of the Development Management Sub-Committee and Licensing Sub-Committee in particular. This could potentially lead to increased challenge of decisions.

7. Equalities impact

- 7.1 There are no equalities impacts as a result of this report.

8. Sustainability impact

- 8.1 There is no sustainability impact as a result of this report.

9. Consultation and engagement

- 9.1 Discussions have taken between officials from Planning, Legal and Risk and Strategy and Insight.

10. Background reading/external references

- 10.1 [Scottish Government Consultation](#)

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11. Links

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